

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHANTELL GOSZTYLA,
Petitioner,
v.
M. PARALLES,
Respondent.

No. 2:21-cv-1815-EFB P

ORDER

Petitioner is a state prisoner proceeding without counsel. She attempted to commence this action using the court's form petition for relief under 28 U.S.C. § 2254. ECF No. 1. However, on that form, she writes, "I am still building my claims. Still gathering proof. As of this date 9-27-21 I am only filing motion to request 90 day extension on AEDPA state of limitation." *Id.* at 5. In a separate filing, petitioner requests a 90-day extension of time to file a petition for relief under § 2254.¹ ECF No. 2. As discussed below, petitioner has not properly commenced a civil action.

To commence a civil action, a party is **required** to file a complaint or petition. Fed. R. Civ. P. 3; Rule 3, Rules Governing § 2254 Cases; *Woodford v. Garceau*, 538 U.S. 202, 203 (2003). Until an action is properly commenced, the court may not rule on a motion for an

¹ Petitioner's filings do not serve as a "protective petition" for purposes of the Anti-Terrorism and Effective Death Penalty Act of 1996's one-year statute of limitation.

1 extension of time. *See Delarm v. McDonald*, No. Civ-S-11-0750-CKD P, 2011 WL 6012346, *2
2 n.6 (E.D. Cal. Dec. 1, 2011) (“filing a request for an extension of time to file a § 2254 habeas
3 petition before the petition has actually been filed is not proper as there is no § 2254 action until
4 the petition has been filed . . .”). If petitioner wishes to proceed with this case, she must file a
5 petition.

6 In addition, petitioner must either file an application for leave to proceed in forma
7 pauperis or pay the required filing fee (\$5.00). *See* 28 U.S.C. §§ 1914(a); 1915(a).

8 Accordingly, it is hereby ORDERED that:

9 1. The Clerk of the Court shall send to petitioner the court’s forms for application for writ
10 of habeas corpus and application for leave to proceed in forma pauperis.

11 2. Within 30 days from the date of service of this order, petitioner shall either pay the \$5
12 filing fee or submit a complete application for leave to proceed in forma pauperis.

13 3. Within 30 days from the date of service of this order, petitioner shall file a petition for
14 writ of habeas corpus.

15 4. Failure to comply with this order may result in this case being closed.

16 DATED: November 4, 2021.

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18 EDMUND F. BRENNAN

19 UNITED STATES MAGISTRATE JUDGE
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